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Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1335

CITIZENS FOR A BETTER ENVIRONMENT, AN ILLINOIS NON-FOR-PROFIT CORPORATION, ET AL.,

Respondents,

vs.

VILLAGE OF SCHAUMBURG,

Petitioners.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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VILLAGE OF SCHAUMBURG,

Petitioners.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

The Village of Schaumburg, an Illinois municipal corporation, petitions for writ of certiorari to review the decision of the United States Court of Appeals for the Seventh Circuit, rendered December 1, 1978.

OPINIONS BELOW.

The Seventh Circuit's decision of December 1, 1978, is reprinted in full as Appendix A to this petition.

The opinion of the Trial Court, entered February 17, 1978, is reprinted in full as Appendix B to this petition.

JURISDICTION.

The judgment of the Circuit Court of Appeals for the Seventh Circuit was entered on December 1, 1978. No petition for rehearing was filed.

The jurisdiction of this Court is invoked pursuant to the provisions of 28 U. S. C. § 1254. This petition for writ of certiorari has been filed in accordance with 28 U. S. C. § 2101.

QUESTIONS PRESENTED FOR REVIEW.

1. Were the plaintiffs entitled to a Summary Judgment holding Section 20(g) of the ordinance of the Village of Schaumburg regulating charitable solicitations invalid?

2. Is Section 20(g) of Chapter 22 of the Schaumburg Village Code, which requires that 75 percent of the proceeds of charitable solicitations will be used directly for the charitable purpose of the organization, unconstitutional either on its face or as applied?

3. Does a municipality have the right to prohibit purportedly charitable solicitations when the soliciting organization fails to demonstrate that at least 75 percent of its receipts are utilized for charitable purposes?

CONSTITUTIONAL PROVISIONS INVOLVED.

This case involves the First and Fourteenth Amendments of the Constitution of the United States. The relevant provisions are set forth in Appendix C to this petition.

STATEMENT OF THE CASE.

This is a complaint for declaratory judgment and injunction brought by an organization known as Citizens For A Better Environment and two of its officers against approximately twenty municipalities in the Chicago metropolitan area. The complaint challenged the validity of the various ordinances of the defendant municipalities which regulate the solicitation for funds by organizations within their corporate limits. The plaintiffs filed a motion for summary judgment. Certain of the municipal defendants were dismissed by agreement and the Court found provisions of various other ordinances to be unconstitutional as a violation of the First and Fourteenth Amendments.

The Village of Schaumburg, petitioner herein, had adopted an ordinance regulating charitable solicitations within the corporate limits of the Village (Appendix C). The ordinance provided a framework for the issuance of permits to charitable organizations desiring to solicit funds in the Village. The only provision of the ordinance challenged was a section which required, in essence, that at least 75 percent of the proceeds of the solicitations by the organization regulated be used directly for charitable purposes of the organization.

That section, designated 20(g) of Chapter 22 of the Village Code, required:

> "Satisfactory proof that at least seventy-five per cent of the proceeds of such solicitations will be used directly for the charitable purpose of the organization. For such purposes, the following items shall not be deemed to be used for the charitable purposes of the organization, to wit:
>
> (1) Salaries or commissions paid to solicitors;
>
> (2) Administrative expenses of the organization, including, but not limited to, salaries, attorney's fees, rents, telephone, advertising expenses, contributions to

other organizations and persons, except as a charitable contribution and related expenses incurred as administrative or overhead items.

For the purpose of satisfying the requirements of subparagraph (g), the organization shall submit a certified audit of the last full year of operations, indicating the distribution of funds collected by the organization, or such other comparable evidence as may demonstrate the fact that at least seventy-five per cent of the funds collected are utilized directly and solely for the charitable purpose of the organization."

The plaintiff refused to submit the information necessary to satisfy this requirement and was denied a permit. No other sections of the ordinance were challenged and it was admitted that if all the conditions of the ordinance were met, the Village Board had no discretion and, by the terms of the ordinance, was required to issue such permit.

The Trial Court granted the plaintiffs' motion for summary judgment and filed a written opinion dated February 17, 1978 in which the Court held Section 20(g) to be unconstitutional noting that CBE was able and willing to comply with other requirements of the ordinance and did not challenge them. The Trial Court held that Section 20(g) was unconstitutional and void on its face and its enforcement against CBE was, therefore, enjoined.

The Court of Appeals affirmed the Trial Court but specifically held that it would not decide the reasonableness of the seventy-five percent requirement as applied to solicitation by more traditional charitable organizations. It did, however, hold the requirement is on its face unreasonable when applied to an organization which, by its nature, allegedly devotes a large portion of its efforts to information gathering and promotion of its objectives and where its paid solicitors necessarily combine solicitation with other primary activities in the organization.

The Court of Appeals held that the Village had a legitimate interest in protecting its citizens from fraud by solicitors who

would use the funds for purposes other than those expressly or impliedly represented and pointed out that the 75 percent requirement might be valid where solicitors represent themselves as mere conduits for contributions. It held, however, that the standard was not a sufficiently narrow solution to the problems of potential fraud or to the need to identify those organizations entitled only to the protections afforded commercial speech.

The Court of Appeals recognized that the appropriate guidance on the issue was this Court's opinion in *Hynes* v. *Mayor of Oradell,* 425 U.S. 610, 96 S. Ct. 1755, 48 L. Ed. 2d 243 (1976), but found that section 22-20(g) was not justified by this Court's ruling in *Hynes.*

The Court attempted to distinguish a decision of the Fifth Circuit, *National Foundation* v. *City of Ft. Worth,* 415 F. 2d 41 (5th Cir. 1969), *cert. denied,* 396 U. S. 1040 (1970), which upheld an ordinance which limited the cost of solicitation of charitable contributions to 20 percent of total receipts. The Seventh Circuit pointed out that the Fort Worth ordinance allowed an organization which did not meet the requirement to show that its percentage was not unreasonable.

The Court, in its opinion, ignored the Village's argument that the plaintiffs were not entitled to a summary judgment on the grounds that there were material issues of fact remaining for trial. The Court merely pointed out that since CBE's failure to qualify for a charitable solicitation permit was caused solely by its inability to meet the 75 percent requirement, it followed that any issue of fact as to the nature of CBE's particular activity was not material to its standing, therefore, not an obstacle to the granting of the motion for summary judgment.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

The writ should be granted in this case because the decision of the Court of Appeals is clearly in conflict with this Court's decision in *Hynes* v. *Mayor of Oradell*, 425 U. S. 610, 96 S. Ct. 1755, 48 L. Ed. 2d 243 (1976), and with the Fifth Circuit's opinion in *National Foundation* v. *City of Ft. Worth*, 415 F. 2d 41 (5th Cir. 1969).

Moreoyer, the opinion ignores the principle originally laid down by this Court in *Breard* v. *Alexandria*, 341 U. S. 622, 95 L. Ed. 1233. These cases clearly hold that the First Amendment is not grounds for forcing a municipality to permit solicitation of funds within its corporate limits and that a municipality may properly regulate door-to-door canvassing and solicitation. The thrust of the *Oradell* decision is to recognize a municipality's power to protect its citizens not only from crime, but undue annoyance by solicitors purportedly acting in a charitable cause.

The opinion of the Court of Appeals will have the effect of granting absolute license to any organization, which purports to be charitable in nature, to abuse the rights of citizens and homeowners in the name of the First Amendment. The opinion itself is inconsistent because it recognizes that the 75 percent requirement is not unreasonable on its face and yet grants a motion for summary judgment thereby denying to the defendant the opportunity to show the reasonableness of the 75 percent requirement. The net effect is that every municipality in the country must now permit any organization, which designates itself as charitable, to enjoy unlimited solicitation priviliges notwithstanding the fact that the funds so derived may be used for purposes far removed from the concepts of charity.

This Court cannot be unmindful of the continuing threat to the safety and privacy of private citizens posed by a multitude

of organizations organized for nefarious purposes but hiding behind the shield of "charity" or purportedly disseminating information. The Court of Appeals assumed that the organization in question here performed the "functions of information dissemination, discussion, and advocacy of public issues." This assumption is controverted in the pleadings and the defendant was not given the opportunity on a trial of the issues to test these allegations.

The result of this opinion, therefore, is that a simple allegation that a gorup is engaged in the dissemination of ideas or the promotion of legislation or other governmental activity will guarantee its immunity from the kind of effort to screen such organizations, employed by the Village of Schaumburg here.

It must be emphasized that the Village does not seek a total ban on such solicitations. It has reasonable regulations relating to solicitation for commercial purposes which are not at issue here. The only question is whether the Village of Schaumburg can properly require that 75 percent of the funds collected by a "charitable" not-for-profit organization be devoted to the purposes for which the organization purportedly was created, as a condition of a permit. The Court of Appeals recognized that such a requirement was not unreasonable on its face and yet denied the defer lant the opportunity to show the reasonableness as applied to this specific organization. Such a determination is contrary to the decisions of this Court and finds no justification in the First Amendment.

ARGUMENT.

I.

THE PLAINTIFFS WERE NOT ENTITLED TO A SUMMARY JUDGMENT.

This is a declaratory judgment and injunction action brought by the Citizens for a Better Environment against the Village of Schaumburg seeking a declaration that the ordinance of the Village of Schaumburg regulating charitable organizations is unconstitutional and seeking an injunction against the enforcement of the ordinance by the Village. The plaintiffs filed a motion for summary judgment at the same time that they filed an amended complaint for declaratory judgment and injunction. The Village filed an answer to the amended complaint and an answer to the motion for summary judgment. The motion for summary judgment was based on the contention of the plaintiffs that upon all the records filed and proceedings in the case there was no genuine issue as to any material fact and that the plaintiffs were entitled to judgment as a matter of law.

An examination of the pleadings, the affidavit in support of the motion for summary judgment, and the answer to the motion filed by the Village, indicates clearly that there are in fact material issues which prevent the granting of the motion for summary judgment and the trial court therefore erred in granting the motion.

Ae we shall demonstrate below, it is clear that as a matter of law the ordinance of the Village of Schaumburg, including the controverted section, Section 22-20(g), is wholly valid as a matter of law. The ordinance does not impinge upon any federally protected constitutional rights and is a reasonable exercise of the police power.

Thus, it is clear that the plaintiffs were not entitled to a summary judgment holding that the ordinance was unconstitutional on its face as a matter of law. However, it is also clear that the pleading, the motions and other matters in the files indicate clearly that there are material issues of fact upon which the court could only rule after taking evidence and conducting a trial.

The rules with respect to summary judgment are well known and extensive discussion and citation are not necessary here, Rule 56(c) of the Rules of Civil Procedure relating to motions for summary judgment provides in part: "The judgment sought shall be rendered forthwith if the pleadings, deposition, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

This Court on numerous occasions has considered the implications of the motion for summary judgment and has refused to approve summary judgments when inferences could be drawn from underlying facts, which when viewed in the light most favorable to the party opposing the motion, would indicate the presence of a material issue of fact. In the case of *Associated Press* v. *United States of America*, 326 U. S. 1, 89 L. Ed. 2013, 65 S. Ct. 1416 (1945), the Court noted that: "Rule 56 should be cautiously invoked to the end that parties may always be afforded a trial where there is a bona fide dispute of facts between them."

In the case of *Sartor* v. *Arkansas Nat. Gas Corp.*, 321 U. S. 620, 88 L. Ed. 967 (1943), the Court, in holding that a summary judgment was improperly granted, commented at page 627:

> "The Court of Appeals below heretofore has correctly noted that Rule 56 authorizes summary judgment only where the moving party is entitled to judgment as a matter of law, where it is quite clear what the truth is, that no genuine issue remains for trial, and that the purpose of the rule is not to cut litigants off from their right of trial by

jury if they realy have issues to try. American Ins. Co. v. Gentile Bros. Co. (CCA 5th) 109 F(2d) 732; Whitaker v. Coleman (CCA 5th) 115 F(2d) 305)."

The Court went on to conclude at page 628:

"It may well be that the weight of the evidence would be found on a trial to be with defendant. But it may not withdraw these witnesses from cross-examination, the best method yet devised for testing trustworthiness of testimony. And their credibility and the weight to be given to their opinions is to be determined, after trial, in the regular manner. The judgment according is reversed."

The Court in the leading case of *United States* v. *Diebold*, 369 U. S. 654, 8 L. Ed. 2d 176, 177 (1962), said: "On summary judgment the inferences to be drawn from the underlying facts contained in (such) materials must be viewed in the light most favorable to the party opposing the motion." The Court there concluded that the materials before the District Court, having raised a genuine issue as to ultimate facts, it was improper to decide the issue on a motion for summary judgment.

In the case of *Adickes* v. *Kress & Co.*, 398 U. S. 144, 26 L. Ed. 2d 142 (1970), the Court again discussed at length the criteria for granting a motion for summary judgment. At page 152, the Court said:

"Our own scrutiny of the factual allegations of petitioner's complaint, as well as the material found in the affidavits and depositions presented by Kress to the District Court, however, convinces us that summary judgment was improper here, for we think respondent failed to carry its burden of showing the absence of any genuine issue of fact."

The Court went on to say at 398 U. S. 158:

"'[o]n summary judgment the inferences to be drawn from the underlying facts contained in [the moving party's] materials must be viewed in the light most favorable to the party opposing the motion. United States v. Diebold, Inc., 369 US 654, 655, 8 L.Ed 2d 176, 177, 82 S Ct. 993] (1962)."

It further commented at 160:

"And, in a comment directed specifically to a contention like respondent's, the Committee stated that '[w]here the evidentiary matter in support of the motion does not establish the absence of a genuine issue, summary judgment must be denied *even if no opposing evidentiary matter is presented.*'"

It concluded its discussion of the motion for summary judgment at page 161 when it said:

"Yet the party moving for summary judgment has the burden to show that he is entitled to judgment under established principles; and if he does not discharge that burden then he is not entitled to judgment. No defense to an insufficient showing is required." 6 J. Moore, Federal Practice ¶ 56.22[2], pp. 2824-2825 (2d Ed 1966)."

The basic rule was also well stated in *Poller* v. *Columbia Broadcasting System*, 368 U. S. 464, 7 L. Ed. 2d 458 (1962), where the Court at page 461 said:

"Summary judgment should be entered only when the pleadings, depositions, affidavits, and admissions filed in the case 'show that [except as to the amount of damages] there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' Rule 56(c), Fed Rules Civ Proc. This rule authorizes summary judgment 'only where the moving party is entitled to judgment as a matter of law, where it is quite clear what the truth is, . . . [and where] no genuine issue remains for trial . . . [for] the purpose of the rule is not to cut litigants off from their right of trial by jury if they really have issues to try." Sartor v. Arkansas Natural Gas Corp. 321 US 620, 627, 88 L ed 967, 972, 64 S Ct 724 (1944)."

The affidavit of Larry Hoellwarth in support of the motion for summary judgment is not helpful in determining whether or not there are material issues of fact to be decided. The only allegation of the affidavit which bears upon what the plaintiffs actually do is paragraph 8 of the affidavit which in essence

states that representatives of CBE distribute pamphlets on environmental subjects and on CBE activities, answer questions, accept signatures, and accepts contributions from residents. Such activities, even if in fact true, would not necessarily preclude the type of regulation contained in the Schaumburg ordinance.

If, as the trial court is required to do, it drew inferences most favorable to the party opposing the motion, it could well infer that the activities described by Hoellwarth are in fact of a fully commercial nature. As the cases on door-to-door solicitation point out, there is a dichotomy between the exercise of freedom of speech and religion on the one hand and purely commercial activities on the other. The Village has adopted regulations covering commercial peddlers and solicitation which are not in issue here. The mere fact that the material which is sold may be informative does not change the commercial character of the business undertaking. Likewise, the mere fact that an organization is organized as not-for-profit, or even approved by the Attorney General as a charitable organization, does not mean that the solicitation itself is not commercial in nature. It is because of the fact that the Village desires to make certain that commercial activities are not clothed with the appearance of charity that the requirement of a 75% devotion of funds to the charitable purposes has been imposed. Certainly, the affidavit of Hoellwarth, which was not subject to cross-examination as the result of the granting of the motion for summary judgment, is insufficient standing by itself to support a motion for summary judgment. Yet, only that affidavit appears in the record to support the purported First Amendment activities of the plaintiffs.

The Village at least should be entitled to inquire into whether what CBE does is protected under the First and Fourteenth Amendments. It was effectively precluded from doing so by the granting of the motion for summary judgment. The factual background of this controversy as sketched in the pleadings and as revealed in the Hoellwarth affidavit is so incomplete as to preclude the entry of a summary judgment.

We therefore respectfully suggest that the trial court as a matter of law erred in granting the motion for summary judgment, and this cause should have been remanded for the purpose of determining whether the trial court had jurisdiction under the statutes and constitutional provisions invoked to even consider the controversy. The trial court should also be required to take evidence on the question of just what CBE in fact does, which brings it within the purview of First Amendment protections. In this connection it might be noted that attached to the Village's answer as an exhibit in support of its allegations on information and belief, was a newspaper article headlined "Is $$ Real Cause in Clean Air Fight?" The information contained in that article at least gives some basis for believing that CBE is engaged primarily and overwhelmingly in the business of making money for its officers and canvassers. Whatever the merits of the free enterprise system as applied to these canvassers, the truth of the alleged facts must be determined in order to ascertain the extent to which the activities in question are subject to First Amendment protection.

It should be noted that the plaintiffs did not file a reply or in any manner controvert the allegations in the Village's answer. Therefore, for the purposes of the motion for summary judgment, the allegations in the answer as affirmative defenses, including the exhibit, must be taken as true. The exhibit indicates that more than two-thirds of the $290,399 collected by CBE in fiscal year 1974-75 was spent on salaries and employee health benefits. Slightly smaller percentages have been spent on salaries each year since CBE's founding. The exhibit points out that about 69% of the salaries were paid to solicitors and fundraisers and 31% to program organizers, and contrasts these figures with the salary and benefit costs of 27% for the American Cancer Society, 15% for the Heart of Illinois United Way Organization, and 22% for the Chicago Chapter of the National Multiple Sclerosis Society.

It should also be noted that the New York Attorney General's office filed suit against CBE, charging the organization had perpetrated a "fraud upon the public" by using 74% of the $175,808 collected in fiscal year 1972-73 for administration and fund raising expenses. The suit never came to trial because ofthe demise of the New York organization.

We suggest that these allegations, which are stated on information and belief, as shown on an exhibit to our answer, raise serious questions as to whether or not the activities of the plaintiffs are in fact a charitable, not-for-profit activity which is protected by the First and Fourteenth Amendments. We believe we are entitled to a trial on these issues, and that the trial court erred in granting the motion for summary judgment.

The Court of Appeals, in its opinion, ignores the question as to whether a summary judgment was proper because of the presence of controverted material issues of fact. The Court concludes that the constitutional validity of Section 22-20(g) is solely a question of law. However, subsequently the Court specifically determines that it will not pass upon the reasonableness of the 75 percent requirement as applied to the "more traditional charitable organizations.

The Court, however, goes on to say, "the requirement is on its face unreasonable when applied to an organization which by its nature *allegedly* devotes a large portion of its efforts to information gathering and promotion of its objectives, and where its paid solicitors necessarily combine solicitation with other primary activities of the organization." (Emphasis added.)

Yet the record does not permit the Court to reach this conclusion with respect to the nature of the organization in question. The very nature of the organization is controverted in the pleadings. The Court of Appeals could not reach the conclusion that the ordinance was unconstitutional on its face without passing upon its reasonableness generally, absent a factual determination as to the nature of the organization in question.

We believe that this Court should grant the petition for Writ of Certiorari because of the vital constitutional questions involved. We believe that the First Amendment does not prevent the Village from enacting the ordinance in question here. We would be remiss, however, if we did not point out that the very posture of this case, decided as it was on a motion for summary judgment when material issues of fact remained to be decided makes the cause inappropriate for the kind of determination made by the Court of Appeals.

II.

SECTION 20(g) OF CHAPTER 22 OF THE SCHAUMBURG VILLAGE CODE IS NOT UNCONSTITUTIONAL ON ITS FACE OR AS APPLIED.

The ambiguous opinion of the Court of Appeals apparently recognizes that the 75 percent requirement as a pre-condition to a charitable solicitation permit is not unreasonable on its face. Having so determined, the Court of Appeals should have reversed the Trial Court for the purpose of taking evidence as to the reasonableness of such requirement as applied to the organization in question. Instead, the Court makes a pronouncement that the 75 percent requirement is on its face unreasonable "when applied to an organization which, by its nature, *allegedly* devotes a large portion of its efforts to information gathering and promotion of its objectives, and where its paid solicitors necessarily combine solicitation with other primary activities of the organization." (Emphasis added.)

The Court goes on to recognize as it must, based upon this Court's opinion in *Hynes* v. *Mayor of Oradell,* 425 U. S. 610, 96 S. Ct. 1755, 48 L. Ed. 2d 243 (1976), that the Village has a legitimate interest in protecting its citizens from a fraud by solicitors. The Court says it has a similar interest in identifying organzations where the salaries paid are so large in relation to

the services provided that the organization is actually a for-profit venture.

The Court of Appeals objects that the requirement applies where it is made clear that the contributions will be used for reasonable salaries, yet the Court prohibited an inquiry into the question of reasonableness. But, even if this Court should conclude that the only issue present is a question of law, we submit that the section in question is clearly valid.

The most recent authoritative decision with respect to the question presented is the decision of this Court in *Hynes* v. *Mayor of Oradell,* 425 U. S. 610, 48 L. Ed. 2d 243 (1976). That case involved the constitutionality of a burough ordinance requiring that any person, including representatives of civic groups and organizations desiring to canvass or solicit for a recognized charitable cause or for a political campaign or cause, must notify the police department in writing for identification only.

The Court held that the ordinance in question was invalid because the ordinance's coverage was unclear, there being no explanation as to what was a "recognized charity" and what was meant by a "federal, state, county or municipal . . . cause" or what groups fell into the class of borough civic groups and organizations. The Court further held that the ordinance did not sufficiently specify what actions were necessary for compliance, there being no explanation as to what must be included in the notice or what the police considered sufficient as identification and explicit standards were not provided for those who applied the ordinance.

However, the case is most significant for laying down certain basic propositions which are totally controlling in the case at bar. The thrust of the *Oradell* case is clearly that a municipality has the right to protect its citizens from crime and annoyance by regulating soliciting and canvassing and that there is no absolute right under the Constitution to make such solicitation. Although the ordinance in question in the *Oradell* case was held to be

invalid, it was held invalid because of vagueness and lack of standards. These defects are clearly not present in the Schaumburg ordinance. The Court specifically pointed out that:

> ". . . the court has consistently recognized a municipality's power to protect its citizens from crime and undue annoyance by regulating soliciting and canvassing. A narrowly drawn ordinance, that does not vest in municipal officials the undefined power to determine what messages residents will hear, may serve these important interests without running afoul of the First Amendment." 425 U. S. 610, 616, 48 L. ed. 2d 243, 251.

At 48 L. ed. 2d 252 the Court went on to use language which is totally controlling in the case at bar, it said:

> "There is, of course, no absolute right under the Federal Constitution to enter on the private premises of another and knock on a door for any purpose, and the police power permits reasonable regulation for public safety. We cannot say, and indeed appellants do not argue, that door-to-door canvassing and solicitation are immune from regulation under the State's police power, whether the purpose of the regulation is to protect from danger or to protect the peaceful enjoyment of the home. See Roman v. Post Office Dept., 397 U. S. 728, 735-738, 25 L. Ed. 2d 736, 90 S. Ct. 1484 (1970)."

The Court held the ordinance in question unconstitutional because of vagueness. The provisions in question, which the Court found defective, included a phrase, "recognized charitable cause" and a "federal, state, county or municipal cause". Finally it was not clear in the ordinance what groups fell into the class of "Borough Civic Groups and Organizations" that the ordinance also covered. 425 U. S. 621, 48 L. ed. 2d 243, 253.

The ordinance in question also failed because it did not sufficiently specify what these within its reach had to do in order to comply.

These defects in the *Oradell* ordinance do not exist in the Schaumburg ordinance. The ordinance is absolutely and totally clear both with respect to the standards to be applied and the

manner in which a permit is to be sought. Section 22-19 of the ordinance clearly defines a charitable organization. Moreover the provisions of Section 22-20 explaining the contents of the application resolve any doubt as who or what organization is in fact covered by the ordinance in question.

The contents of the application are specifically spelled out in subparagraphs (a) through (g) of Section 22-20. Included are the name of the organization, name and address of the person in charge of solicitation, the names and addresses of all persons who will solicit, the dates and times of day such solicitation are to be made, a written statement of recent date by the Attorney General of the State of Illinois indicating that the organization has complied with the State Statute regulating solicitation and collection of funds for charitable purposes, satisfactory proof that the organization is a tax exempt organization under the Internal Revenue code of the United States and satisfactory proof that at least 75% of the proceeds of such solicitations will be used directly for the charitable purposes of the organization.

The ordinance further provides what items will not be deemed to be used for charitable purposes including salaries and commissions paid to solicitors and salaries, attorneys fees, rent, telephone, advertising expenses, contributions to other organizations and purposes except as a charitable contribution and related expenses incurred as administrative or overhead items.

The manner in which the application is to be submitted and processed is also specifically spelled out in Section 22-21, Section 22-22 and Section 22-24. For the purpose of satisfying the requirement of 75% of the proceeds being used directly for charitable purposes the organization is to submit a certified audit of the last full year of operation.

Thus the standards and the manner of application are spelled out, clearly and specifically and the problem of lack of standards which proved fatal in the *Hynes* case simply does not exist with respect to the Schaumburg ordinance. The ordinance is also clear that no discretion is vested in the Village Board. Section

22-21 specifically provides: "If the Village Board shall find and determine that all requirements of this article have been met, a permit shall be issued specifying the dates and times at which solicitation may take place".

The hours of solicitation are set forth in Section 22-24. The dates and times of day such solicitations are to be made in the geographical area within the Village is determined by the application under Section 22-20. It necessarily follows that under doctrine of *Hynes* v. *Mayor of Oradell* the Schaumburg ordinance is totally and completely valid. It was enacted pursuant to the recognized authority of municipalities to regulate canvassing and soliciting under the police power to protect its citizens from fraud and danger and to protect the peaceful enjoyment of the home. The standards guiding the issuance of permits are specific and reasonable. The ordinance does not leave any discretion in the hands of the Village Board. All parties who meet the provisions of the ordinance are entitled to a permit to solicit.

The power of a municipality to regulate soliciting even in the face of a First Amendment challenge was first recognized by this Court in the case of *Breard* v. *Alexandria*, 341 U. S. 622, 95 L. ed. 1233. In the *Breard* case, the Court treated at length the history of the so-called Green River ordinance. It referred with approval to the original decision in *Town of Green River* v. *Fuller Brush Company*, 65 F. 2d 112, where the ordinance declared uninvited solicitors visiting private premises to be a nuisance, and the Federal Court sustained the ordinance as not being in violation of any federal rights. In *Breard*, as in the case at bar, the canvassers were selling publications and the ordinance prohibiting them from soliciting door to door was alleged to abridge freedom of speech and press. The court pointed out: "We agree that the fact that periodicals are sold does not put them beyond the protection of the First Amendment. The selling, however, brings into the transaction a commercial feature." The court concluded:

> "It would be, it seems to us, a misuse of the great guarantees of free speech and free press to use those guarantees to

> force a community to admit the solicitors of publications to the home premises of its residents. We see no abridgement of the principles of the First Amendment in this ordinance."

The court pointed out that in an earlier case involving a Green River ordinance, *Green River* v. *Bunger*, 50 Wyo. 52, 58 P. 2d 456, the Court had dismissed an appeal for lack of a substantial federal question.

Two other state cases involving substantially the same kind of questions as applied to Jehovah's Witnesses were dismissed by this Court for lack of a federal question. *Hall* v. *Commonwealth*, 188 Va. 72, 335 U. S. 875; *Watchtower Bible & Tract Society* v. *Metropolitan Life Insurance Company*, 272 App. Div. 1039, 335 U. S. 886.

This Court has repeatedly held that the First Amendment does not give unbridled discretion for the exercise of free speech on private property, or even on public property. Thus, in the case of *Tinker* v. *DesMoines Community School District*, 393 U. S. 503, 21 L. Ed. 2d 731 (1969), Mr. Justice Black in a dissenting opinion pointed out at page 517:

> "While I have always believed that under the First and Fourteenth Amendments neither the State nor the Federal Government has any authority to regulate or censor the content of speech, I have never believed that any person has a right to give speeches or engage in demonstrations where he pleases and when he pleases. This Court has already rejected such a notion. In Cox v Louisiana, 379 US 536, 554, 13 L Ed 2d 471, 85 S Ct 453 (1965), for example, the Court clearly stated that the rights of free speech and assembly 'do not mean that everyone with opinions or beliefs to express may address a group at any public place and at any time.' "

Moreover, it is clear that the First Amendment does not require that individuals be permitted to go on private property to express their opinions, *Lloyd Corp.* v. *Tanner*, 407 U. S. 551, 33 L. Ed. 2d 131, and a municipality can even prevent the use of public streets by ordinance when the exercise of freedom of

speech would result in an interference with normal activities. *Grayned* v. *City of Rockford*, 408 U. S. 104, 33 L. Ed. 2d 222 (1972). In the *Grayned* case incidentally, the Supreme Court rejected an argument of overbreadth and vagueness as applied to a municipal ordinance considerably less specific than the ordinance in the case at bar.

It is stated by the Court of Appeals that the 75% standard is unreasonable as applied here. Yet, this is a matter for proof and not for mere conclusion. The legislative body certainly could reasonably conclude that a 75% requirement for the use of funds by an organization purporting to be charitable in nature was reasonable. The burden would be upon the plaintiffs to overcome the presumption of validity attaching to that legislative action. The mere conclusion that the standard is unreasonable as applied falls far short of the proof necessary to hold an ordinance unconstitutional.

As a matter of fact, the United States Court of Appeals for the Fifth Circuit has specifically held constitutional an ordinance which limited the cost of solicitation of charitable contributions within the city to 20% of the total receipts. In the case of *National Foundation* v. *City of Fort Worth*, 415 F. 2d 41 (1969), the Court at page 45 said:

> "No constitutional right exists to make public solicitation of funds for charity. The reasonable regulation of charitable organizations is within a government's police power. Cantwell v. State of Connecticut, 310 U.S. 296, 304, 60 S.Ct. 900, 84 L.Ed. 1213; American Cancer Society v. City of Dayton, 1953, 160 Ohio St. 114, 114 N.E.2d 219; Gospel Army v. City of Los Angeles, 1945 27 Cal.2d 232, 163 P.2d 704; Eye Dog Foundation v. State Board of Guide Dogs, supra 63 Cal.Rptr. at 30, 432 P.2d at 726; City of Seattle v. Rogers, 1940, 6 Wash.2d 32, 106 P.2d 598, 130 A.L.R. 1498; Ex parte Williams, 1940, 345 Mo. 1121, 139 S.W.2d 485, cert. denied Williams v. Golden, 311 U.S. 675, 61 S.Ct. 42, 85 L.Ed. 434; Ex parte White, 1935, 56 Okl.Cir. 418, 41 P.2d 488; Ex parte Dart, 172 Cal. 47, 155 P. 63 L.R.A. 1916D,

905, Ann.Cas. 1917D, 1127. In Cantwell, supra, the Supreme Court stated that:

> "Without doubt a state may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent. The state is likewise free to regulate the time and manner of solicitation generally, in the interest of public safety, peace, comfort or convenience." 310 U. S. at 306-307, 60 S. Ct. at 904.

Since the solicitation of funds for charity may be the subject of state regulation, we now inquire whether the ordinance adopted by the City to regulate public solicitation on the streets of Fort Worth was a reasonable exercise of its police power."

It went on to consider whether or not the ordinance in question was reasonable. At page 46, the Court of Appeals recognized the right of the municipality to deny permission to solicit if the cost of collection was excessive. It said:

> "As an incident to the right of a city to regulate the use of its streets by solicitors and as an element of the protection a city may afford its citizens, a city may reasonably require of one who wishes to solicit that he furnish it with a statement of the past and expected receipts and costs of collection of the funds solicited within its limits and to deny permission to solicit if the cost of collection is excessive."

Finally, the Court recognized that the burden was on the plaintiff to establish that the ordinance was unreasonable. It said at page 46:

> "Upon the Foundation rested the burden of establishing that the ordinance did not rest on any reasonable basis. Goldblatt v. Town of Hempstead, 369 U.S. 590, 82 S.Ct. 987, 8 L.Ed.2d 130. It did not meet this burden and we cannot say that the limitation provisions of the ordinance are unreasonable, especially in light of the strong presumption of constitutionality afforded an ordinance. Goldblatt v. Town of Hempstead, supra; Mestre v. City of Atlanta, 5th Cir. 1958, 255 F.2d 401; Standard Oil Co. v. City of Tallahassee, 5th Cir. 1950, 183 F.2d 410, cert. denied 340 U.S. 892, 71 S.Ct. 208, 95 L.Ed. 647; City of Anchorage v. Richardson Vista Corp., 9th Cir. 1957, 242 F.2d 276; City of Seattle v. Rogers, supra; American Cancer Society v. City of Dayton, supra at 223 of 114 N.E.2d. The standards fixed by the ordinance are a valid and constitutional means of achieving the City's purpose of protecting its citizens."

The Court then went on to reject an argument that the ordinance was lacking in definite and certain standards. An examination of the ordinance, which is set forth in a footnote to the opinion, makes it clear that the Fort Worth ordinance was not nearly as specific or definite as the Schaumburg ordinance. It would appear that the case of *National Foundation* v. *City of Fort Worth* is totally controlling on the issues in this case. At the very least, the holding in the case indicates that a motion for summary judgment was totally improper, and that the Village is entitled to a trial, at least on the question of the reasonableness of the 75% restriction. Since the 75% restriction is the only point in issue, the Court of Appeals conclusion that the standard is unreasonable certainly does not conform with the decision in the *National Foundation* case.

The Court of Appeals attempts to distinguish the *National Foundation* case on the grounds that an organization which did not meet the requirement was given the opportunity to show that its percentage was not unreasonable.

The Fifth Circuit opinion is not based upon such a distinction. The quotation from the case, which appears in the Court of Appeals opinion, is taken out of context and was not the basis upon which the opinion rests. Instead, as indicated above, the Court clearly held that a city may reasonably require of one who wishes to solicit, a statement of the past and expected receipts and costs of collection and to deny permission to solicit if the cost of collection is excessive. Unlike the Fort Worth ordinance, the Schaumburg ordinance contains specific standards

by which to measure the application for a permit. The element of discretion is totally removed.

At the very least, the question as to whether the 75 percent requirement is unreasonable as applied, is a question fact which must be determined by a trial. Yet, contrary to the specific holding in the *Fort Worth* case, the Court of Appeals here makes a determination that the 75 percent requirement is unreasonable on its face when applied to an organization *allegedly* carrying out activities which the Court of Appeals deems to be non-commercial in nature.

The Court of Appeals says, "the 75 percent requirement might be valid where solicitors represent themselves as mere conduits for contributions." There is nothing in the record to indicate that anything to the contrary is represented. But the Court of Appeals then goes on to say that the standard is thus not a sufficiently narrow solution to the problems of potential fraud or to the need to identify those organizations entitled only to the protections afforded commercial speech. The Court of Appeals ignores the fact that the 75 percent requirement does in fact provide such a solution recognized as valid in the *National Foundation* case.

The Court of Appeals, in its opinion, relies upon *Cantwell* v. *Connecticut*, 310 U. S. 296, 60 S. Ct. 900, 84 L. Ed. 1213 (1940), *Schneider* v. *State*, 308 U. S. 147, 60 S. Ct. 146, 84 L. Ed. 155 (1939), and *Martin* v. *Struthers*, 319 U. S. 141, 63 S. Ct. 862, 87 L. Ed. 1313 (1943). These cases are clearly not applicable here. In each of these cases, this Court determined that the ordinances in question involved administrative discretion without standards. This Court considered *Cantwell* at length in the *Oradell* case. It also clearly distinguished *Schneider* v. *State* and *Martin* v. *Struthers*. These cases involved ordinances which required permits without standards and vested unbridled discretion in an administrative officer or simply prevented canvassing completely.

As a matter of fact, in the *Cantwell* case this Court said, "without doubt a state may protect its citizens from fraudulent

solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish identity and his authority to act for the cause which he purports to represent." 48 L. ed. 2d 252.

In commenting on the very cases relied upon by the Court here, the court in *Oradell* said:

> "These opinions of the Court and the dissenting opinions found common ground as to the important municipal interests at stake. See Martin v. Struthers, supra, at 152, 87 L. Ed. 1313, 63 S. Ct. 862 (Frankfurter, J., dissenting); id., at 154, 87 L. Ed. 1313, 63 S. Ct. 862 (Reed, J., dissenting); Douglas v. Jeannette, 319 U. S. 157, 166, 87 L. Ed. 1324, 63 S. Ct. 877 (1963) (Jackson J., dissenting in Martin v. Struthers). Professor Zechariah Chafee articulated something of the householder's right to be let alone, saying:
>
> > 'Of all the methods of spreading unpopular ideas, [house-to-house canvassing] seems the least entitled to extensive protection. The possibilities of persuasion are slight compared with the certainties of annoyance. Great as is the value of exposing citizens to novel views, home is one place where a man ought to be able to shut himself up in his own ideas if he desires.' Free speech in the United States 406 (1954).
>
> Professor Chafee went on to note: '[These cases] do not invalidate all ordinances that include within their scope . . . doorway dissemination of thought. Several sentences in the opinions state that ordinances suitably designed to take care of legitimate social interests are not void.' Id., at 407."

It must be emphasized that this case is not one where the granting of a permit is at the discretion of the Chief of Police, the Village Board, or any other official. Permits are granted in a mandatory fashion to all who meet the requirements of the ordinance. The ordinance contains clear and definite standards which are reasonably utilized to determine the identity of a truly charitable organization. The standards include approval by the Attorney General, and tax-exempt status under the Internal Revenue Code.

The other standard which the Court of Appeals sets aside by fiat, has to do with the amount of funds actually expended for charitable purposes.

The quotation from Justice Brennan in *Hynes* quoting *Thomas* v. *Collins*, 323 U. S. 516, 65 S. Ct. 315, 323, 89 L. Ed. 440 (1945), is not relevant. Justice Brennan's remarks clearly were related to restraining orderly discussion and persuasion at an appropriate time and place. We suggest that the invasion of a private home uninvited and at inappropriate hours is not a proper time and place for orderly discussion and persuasion. We think it is clear that Section 20(g) of Chapter 22 of the Schaumburg Village Code is not invalid on its face nor as applied to the plaintiffs' organization here.

The opinion of the Court of Appeals flies in the face of this Court's rulings in *Breard* and *Hynes* and that of the Fifth Circuit in the *National Foundation* case. It opens the door to unrestricted solicitation in the name of charity by organizations which are nothing more nor less than fraudulent devices to enrich the sponsors at the expense of the unwitting public. The magnificent edifice of the First Amendment should not be utilized to sanction such a sorry effort.

III.

A MUNICIPALITY HAS THE RIGHT TO PROHIBIT PURPORTED CHARITABLE SOLICITATIONS WHEN THE SOLICITING ORGANIZATION FAILS TO DEMONSTRATE THAT AT LEAST 75 PERCENT OF ITS RECEIPTS ARE UTILIZED FOR CHARITABLE PURPOSES.

This case presents a simple question as to whether a municipality may, in the interest of protecting the public from fraud, crime and undue annoyance, prohibit door-to-door solicitation for funds on private property by an allegedly charitable organ-

ization which devotes more than one quarter of its collections for other than the charitable purposes of the organization.

We believe we have demonstrated above that this Court has repeatedly recognized in *Oradell* and even *Cantwell* and *Martin* v. *Struthers* that there are important municipal interests at stake. Professor Chaffee has articulated the householder's right to be left alone pointing out that the possibilities of persuasion are slight compared to the certainty of annoyance.

The cases which have invalidated ordinances which purported to regulate or prohibit door-to-door solicitation turned upon the unabridged discretion, vested usually in administrative officers and did not announce a rule that such solicitation in the name of charity was beyond the scope of reasonable municipal regulation. When, as is apparently the case here, a majority of the funds are utilized not for the charitable purposes for which the organization is purportedly organized, but instead to compensate canvassers, officers, and employees, it must be concluded that what is involved is nothing more nor less than a commercial enterprise even though it be dressed in the trappings of a charitable or environmental purpose.

Schaumburg's ordinance is intimately related to the articulated substantial governmental interests clearly recognized by this Court in *Hynes* and *Breard*. The protections of citizens from crime and undue annoyance and in the quiet enjoyment of their homes are well recognized, articulated and substantial governmental interests. In fact, they are paramount objectives of any organized society.

If a citizen inquires as to whether a solicitor has received a permit from a municipality, he knows immediately whether or not the solicitor represents a charitable organization as recognized by the Village or is involved in either a commercial or even fraudulent enterprise. A homeowner has a legitimate right to know whether or not the solicitor who presents himself at his door as a representative of a charitable organization is in fact telling the truth.

The Village, as an exercise of its police power, clearly has the right to prescreen individuals who would represent themselves as charitable solicitors. The Village, of course, is not censoring the views of CBE or any other group. All the traditional methods of communication are open, be they radio, television, newspapers or even handbills in the public streets. All the Village is seeking is to require that persons who go upon the private property of its citizens and represent themselves as charitable solicitors are in fact what they claim to be. No legitimate views are being barred from the Village of Schaumburg nor is any chilling effect on the First Amendment presented.

We would be the first to agree that an ordinance of this nature must set forth standards which are specific and not vague. However, it is clear that this ordinance does in fact set forth specific standards. In the case of *Grayned* v. *City of Rockford*, 408 U. S. 104, 33 L. Ed. 2d 222, this Court was considering an ordinance which outlawed demonstrations near schools in session and the Rockford Anti-Noise Ordinance which prohibited disturbing a school session by willfully making a noise or diversion while on adjacent public or private grounds.

The Court held valid as not vague the anti-noise ordinance. The Court relying upon *Tinker* v. *DesMoines School District*, 393 U. S. 503, held that the ordinance was not overbroad or vague and further held that expressive activity may be prohibited if it materially disrupts classwork or involves substantial disorder or invasion of the rights of others. The Court went on to note that:

> "Rockford's modest restriction on some peaceful picketing represents a considered and specific legislative judgment that some kinds of expressive activities should be restricted at a particular time and place . . . Such a reasonable regulation is not inconsistent with the First and Fourteenth Amendments."

The specific standards of this ordinance make it clear that the Village can properly legislate to restrict some kinds of expressive

activity at a particular time and place, in this instance, at the domiciles of its citizens. We have previously discussed the *Oradell* case at length and pointed out that the standards imposed in the Schaumburg ordinance clearly meet the requirements of Justice Berger's opinion.

The Court of Appeals' opinion also attacks the definition of "charitable organization" or "charitable purpose" set forth in Section 22-19 of the Schaumburg ordinance; but, that section was never attacked or challenged for vagueness in the Court below. The Court of Appeals simply reached out to justify its untenable position by raising an issue which was not before the Trial Court.

This Court's decision in the *Hynes* case involves phrases which were totally unclear in the context of the ordinance there at issue. The Court held that there was an unbridled grant of discretion to an administrative officer and that the individuals subject to the ordinance could not know what the requirements of the ordinance were in fact. No such difficulties present themselves in the case at bar.

The standards of the ordinance are clear. The 75 percent requirement admittedly is not unreasonable on its face but only purportedly as applied by the Court of Appeals to a factual situation which was not properly before it.

The *National Foundation* case recognizes the right of a municipality to prohibit solicitations for funds by charitable organizations when in fact a disproportionate amount of the funds are not used for charitable purposes. We suggest that under the decisions of this Court and in the interest of the public welfare, a municipality does have the right to prohibit so-called charitable solicitations when less than 75 percent of its receipts are utilized for charitable purposes. To transform this exercise of municipal authority into a violation of the First and Fourteenth Amendments would, in the words of this Court in the *Breard* case, constitute "a misuse of the great guarantees of free speech and free press."

CONCLUSION.

This Court should grant the Writ of Certiorari because the recent opinion of the Court of Appeals is clearly contrary to this Court's holding in *Hynes* v. *Mayor of Oradell*, 425 U. S. 610, 96 S. Ct. 1755, 48 L. Ed. 2d 243 (1976). The opinion flies in the face of the repeated holdings of this Court that solicitation for funds can be regulated by an ordinance carefully and narrowly drawn. The Court of Appeals opinion is also directly contrary to that of another Circuit, *National Foundation* v. *City of Fort Worth*, 415 F. 2d 41 (5th Cir. 1969), *cert. denied*, 396 U. S. 1040 (1970). It takes away the right of local municipalities to protect citizens in their homes, from fraud, crime or merely unwanted annoyances.

The Court of Appeals opinion affirms a summary judgment by holding unreasonable as applied, an ordinance provision which it admits could be reasonable on its face. At the same time, it denies the opportunity to present evidence on the question of reasonableness as applied.

The Court of Appeals misreads this Court's opinions to grant an unlimited license to solicit on the doorsteps of the homes of private citizens to any organization which *alleges* that it is engaged in the dissemination of information or the promotion of legislation or other governmental action. This kind of unbridled license is neither mandated nor required by the First Amendment but in fact does violence to the equally sacred constitutional principle of the right to be left alone.

The Court of Appeals for the Seventh Circuit has rendered a decision on an extremely important and far reaching question

which we suggest is clearly in conflict with the decisions of this Court and another Court of Appeals. It is a vitally important question which should be settled by this Court and the petition should be granted.

Respectfully submitted,

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APPENDIX A—OPINION OF SEVENTH CIRCUIT COURT OF APPEALS.

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit

No. 78-1384

CITIZENS FOR A BETTER ENVIRONMENT, an Illinois not-for-profit corporation, and LARRY A. HOELLWARTH,
Plaintiffs-Appellees,

v.

VILLAGE OF SCHAUMBURG,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 76-C-470—Prentice H. Marshall, *Judge.*

ARGUED SEPTEMBER 18, 1978—DECIDED DECEMBER 1, 1978

Before FAIRCHILD, *Chief Judge,* KILKENNY, *Senior Circuit Judge*,* and BAUER, *Circuit Judge.*

FAIRCHILD, *Chief Judge.* This is an appeal from a judgment wherein a portion of a village code regulating solicitation by charitable organizations was found unconstitutional on its face.

The Village of Schaumburg (hereinafter "the Village"), defendant below and appellant here, is a municipal corporation and home rule municipality located in Cook County, Illinois. Chapter 22 of the Village code regulates the activities of peddlers and solicitors within the Village.

* The Honorable John F. Kilkenny, Senior Circuit Judge of the Ninth Circuit, is sitting by designation.

Article II (sections 22-6 through 22-18) regulates the activities of for-profit peddlers and solicitors, defined in section 22-6 as persons who go from place to place to sell or take orders for merchandise or services. A permit is required for such activity, and an application for a permit is to be denied "to any applicant who is not found to be a person of good character and reputation" (section 22-9). The permit may be revoked for violation of any Village ordinance or state or federal law, or when the registrant "shall cease to possess the qualifications and character required . . . for the original registration" (section 22-11). Violators of sections 22-6 through 22-17 are subject to a maximum fine of $500 for each offense (section 22-18).

Charitable solicitations, on the other hand, are regulated by article III (sections 22-19 through 22-24). Section 22-19 defines a charitable organization as "any benevolent, philanthropic, patriotic, not-for-profit, or eleemosynary group, association or corporation, or such organization purporting to be such, which solicits and collects funds for charitable purposes." A charitable purpose is defined as "any charitable, benevolent, philanthropic, patriotic, or eleemosynary purpose." A permit is also required for charitable solicitations, but the requirements for the granting of a permit are different from those for for-profit peddlers and solicitors. For example, the organization must have complied with specified portions of state law relating to charitable solicitations and be recognized as tax exempt under section 501(c)(3) of the United States Internal Revenue Code. Section 22-20(g) requires that 75 percent of the proceeds of solicitations must be used directly for the charitable purpose of the organization. Solicitors' salaries and administrative expenses (which include other employees' salaries) are deemed *not* used for the organization's charitable purpose.[1]

1. The requirement contained in section 22-20(g) is as follows:
(g) Satisfactory proof that at least seventy-five per cent of the proceeds of such solicitations will be used directly for the charitable purpose of the organization. For such purposes, the

(Footnote continued on next page.)

Citizens for a Better Environment (hereinafter "CBE"), plaintiff below and appellee here, is an organization whose stated purpose is the protection and improvement of the Illinois environment. CBE is registered and in good standing with the Illinois Attorney General's Charitable Trust Division, and is recognized as tax exempt and gifts to it as tax deductible under the United States Internal Revenue Code. CBE applied for and was denied a permit to canvass and solicit contributions from door-to-door in the Village and in various other municipalities in the Chicago metropolitan area.[2] CBE and two of its officers brought suit against these municipalities for a declaratory judgment and injunction.

The portions of the suit against the other municipalities were concluded in various ways. In the action against the Village, the district court, after recognizing that CBE met all other requirements of section 22-20 and the denial of permission to canvass in the Village was based solely on CBE's failure to meet the 75 percent requirement, declared, upon motion by CBE for summary judgment, that section 22-20(g) and the Village's action thereunder were constitutionally impermissible, enjoined further prohibition of CBE soliciting and canvassing in the Village, and ordered the Village to issue a permit to CBE forthwith. The rationale of the district court was that the 75 percent requirement was an impermissible form of censor-

(Footnote continued from preceding page.)

following items shall not be deemed to be used for the charitable purposes of the organization, to wit:
(1) Salaries or commissions paid to solicitors;
(2) Administrative expenses of the organization, including, but not limited to, salaries, attorneys' fees, rents, telephone, advertising expenses, contributions to other organizations and persons, except as a charitable contribution and related expenses incurred as administrative or overhead items.

2. Counsel for CBE stated that it is the practice of the organization, regardless of its opinion of the validity of a particular regulation, to comply with municipal permit requirements if possible.

ship and a restraint on the exercise of First Amendment freedoms, and that the Village had no legitimate interest in prescribing such a test.

I.

CBE's failure to qualify for a charitable solicitation permit from the Village was caused solely by its inability to meet the 75 percent requirement, and the decision of the district court was limited to that requirement. Therefore on this appeal we are concerned only with the validity of tion 22-20(g).

The Village asserts that summary judgment by the district court was improper because material issues of fact were present. The Village raises a question as to the actual nature of CBE's activities; it asserts that as an organization mainly concerned with providing salaries for its members, CBE's activities are not within the protection of the First and Fourteenth Amendments, and thus the district court lacked jurisdiction to pass on the constitutionality of section 22-20(g). The Village also alleges that the 75 percent requirement is a reasonable way to protect its citizens by distinguishing commercial from charitable organizations, and at a minimum a trial was required to determine that reasonableness.

The Village also argues that section 22-20(g) is not unconstitutional on its face. This argument is based on the Village's evaluation of the provisions of chapter 22 in light of previous cases where the regulation of solicitation was declared unconstitutional, and on the Supreme Court's pronouncement that there is no absolute right to enter on private premises and solicit funds.[3] The Village concludes from its evaluation that the fatal flaws of vagueness and impermissible discretion of public officials are not present in chapter 22, that the provisions enjoy a presumption of constitutional validity that has not been over-

3. *Hynes* v. *Mayor of Oradell,* 425 U. S. 610, 619, 96 S. Ct. 1755, 1760, 48 L. Ed. 2d 243 (1976).

come, and that any infringement of First Amendment rights is minimal and a result of the Village's legitimate interest in protecting its citizens from fraud by those operating under the guise of charitable organizations.

CBE, on the other hand, argues that summary judgment was proper, alleging that classification of its particular activities is irrelevant to the question of constitutionality. CBE argues that section 22-20(g) is too restrictive of First Amendment freedoms and is thus invalid on its face; it provides an absolute bar to canvassing and soliciting if an organization does not meet the 75 percent requirement, it militates against certain types of organizations, it in effect requests information which has a "chilling effect" on the exercise of First Amendment rights, and it is not intimately related to the purpose of protection of the Village citizens from fraud.

II.

The special principles pertinent to First Amendment challenges lead to the conclusion that this action is properly brought by CBE. CBE applied for and was denied a permit to canvass in the Village. Thus a controversy exists, and CBE has the personal stake in the outcome required by this court in *Grandco Corp.* v. *Rockford,* 536 F. 2d 197, 207 (7th Cir. 1976). In that case a challenge to the facial validity of a movie theater licensing ordinance was allowed where the challenger needed to comply with the ordinance to operate its business and had applied for and been denied a license.

Furthermore, in the context of a First Amendment challenge, there is no additional requirement that CBE show it would not have been denied a permit under a constitutionally valid ordinance. This principle was stated by the Supreme Court in *NAACP* v. *Button,* 371 U. S. 415, 432, 83 S. Ct. 328, 337-38, 9 L. Ed. 2d 405 (1963):

> "[T]he instant decree may be invalid if it prohibits privileged exercises of First Amendment rights whether or not

> the record discloses that the petitioner has engaged in privileged conduct. For in appraising a statute's inhibitory effect on such rights, this Court has not hestitated to take into account possible applications of the statute in other factual contexts besides that at bar."

See also *Thornhill* v. *Alabama*, 310 U. S. 88, 97-98, 60 S. Ct. 736, 741-42, 84 L. Ed. 1093 (1940). This court recognized the principle in *Grandco, supra.*

It thus follows that any issue of fact as to the nature of CBE's particular activities is not material to its standing to challenge the Village code on First Amendment grounds and is therefore not an obstacle to the granting of summary judgment.

III.

We turn now to the constitutional validity of section 22-20 (g). The Village asserts that the reasonableness of section 22-20(g) is an issue of fact. Undoubtedly the determination of reasonableness is a factual inquiry in many situations. However, in the present situation we conclude that the question is solely one of law; we perceive no relevant factual questions which require resolution.

We agree with both parties that the appropriate and most recent guidance on the issue before us is to be found in *Hynes* v. *Mayor of Oradell*, 425 U. S. 610, 96 S. Ct. 1755, 48 L. Ed. 2d 243 (1976). Although the ordinance involved in *Hynes* was invalidated on the ground of vagueness,[4] the general guidelines the decision provides, evaluated in the context of prior decisions on the regulation of solicitation, support our decision here.

The Supreme Court stated in *Hynes* that there is no absolute right to enter on private premises and knock on another's door,

4. The ordinance at issue required registration with the police department, for identification purposes, by any person wishing to canvass or solicit for a charitable or political cause.

and that the police power permits ***reasonable*** regulation of this activity for the public safety. 425 U. S. at 619, 96 S. Ct. at 1760. However, when this regulation involves First Amendment activity, that regulation must be accomplished "so as not to intrude upon the right of free speech," 425 U. S. 616, 96 S. Ct. at 1758-59: it must be done "with narrow specificity," 425 U. S. at 620, 96 S. Ct. at 1760, be "suitably designed" to serve the legitimate interest involved, 425 U. S. at 619, 96 S. Ct. at 1760, and must not give broad discretionary powers to municipal officials in granting a permit, 425 U. S. at 617, 96 S. Ct. at 1759.

This framework is consistent with and further explained by previous Supreme Court decisions relating to the regulation of door-to-door solicitation. The Court has recognized the purposes of the protection of the people from fraud and disruption of the peaceful enjoyment of their homes, but has held invalid such regulation when it unreasonably obstructed the collection of funds, *Cantwell* v. *Connecticut*, 310 U. S. 296, 60 S. Ct. 900, 84 L. Ed. 1213 (1940), or when it, in fact, prohibited canvassing and solicitation, *Schneider* v. *State*, 308 U. S. 147, 60 S. Ct. 146, 84 L. Ed. 155 (1939). In *Martin* v. *Struthers*, 319 U. S. 141, 63 S. Ct. 862, 87 L. Ed. 1313 (1943), the Court recognized the need to balance the purposes of protection and peace against the traditions and values of free discussion and the dissemination of ideas.

If the restrictions placed on canvassing and soliciting by section 22-20(g) do not meet these standards, then the provision must fail. The fact that CBE may use other methods, such as the mails, to contact Village citizens is not relevant to the First Amendment challenges. See *Va. State Board of Pharmacy* v. *Va. Citizens Consumer Council, Inc.*, 425 U. S. 748, 757 n. 15, 96 S. Ct. 1817, 1823, 48 L. Ed. 2d 346 (1976). In addition, although duly enacted provisions normally enjoy a presumption of constitutionality, the rule is not applicable where there is a question of improper infringement of the exercise of First

Amendment rights. See *Organization for a Better Austin* v. *Keefe*, 402 U. S. 415, 419, 91 S. Ct. 1575, 29 L. Ed 2d 1 (1971), which vacated an injunction against the peaceful distribution of leaflets, stating that prior restraints bear a heavy burden *against* constitutionality.

Section 22-20(g) sets out specific standards for the granting of a permit; if these standards are met, the Village Board must grant the permit. Thus, the provision does not have the same facial defects of vagueness or broad discretion which have resulted in the invalidation of prior regulatory efforts. However, when the Court in *Hynes* stated that a narrowly drawn ordinance which does not give broad discretion to public officials "*may* serve these important [peace and protection] interests without running afoul of the First Amendment," 425 U. S. at 616, 96 S. Ct. at 1759, [emphasis added], it could not have meant that any ordinance which avoids those two pitfalls automatically meets First Amendment standards.

Chapter 22 does present problems similar to those encountered with regulations previously struck down for vagueness. Articles II and III do not necessarily cover all possible situations of door-to-door solicitation. There is, for example, no express exemption from the charitable solicitation provisions for religious or political campaign canvassing combined with solicitation of funds, although this type of activity is arguably within the section 22-19 broad definition.[5] In addition, it is unclear, as Village counsel admits, whether non-scientific research activities

5. The Village argues that religious and political organizations are not under sections 22-19 through 22-24 because they are not specifically enumerated in section 22-19. This is certainly not apparent on the face of the provision; indeed it seems inconsistent with the broad definition employed. Village counsel admits that inclusion of religious organizations probably would result in impairment of the First Amendment freedoms of such organizations.

The Illinois statutes regulating charitable solicitation employ essentially the same definitions for charitable organization and charitable purpose as the Village code; however, there is express exemption from the registration requirements for religious organizations. Ill. Rev. Stat. ch. 23, §§ 5101(a)(f), 5103(a).

could be deemed part of an organization's charitable purpose. The logical implication of excluding all salaries from charitable purpose is that it would not be so classified. Furthermore, it is unclear whether organizations which neither meet the requirements of section 22-20 nor come under the definitions of for-profit peddlers and solicitors are subject to any regulation under the Village code.[6]

Once an organization does fall under the Village's broad definition of charitable organization, however, it is apparently absolutely prohibited from canvassing and soliciting in the Village if it does not meet the 75 percent requirement, or, as the Village suggests in the case of CBE, it is forced to meet the more strict requirements for for-profit activities under sections 22-6 through 22-18. Section 22-19 encompasses not only the traditional concept of charitable organizations—those aiding the poor or disadvantaged, for example, or working to overcome traditionally recognized evils such as disease—but organizations such as CBE holds itself out to be, which serve an information gathering and dissemination function and routinely work to promote legislation or other government action. The Village admits that "public interest" groups could come within the purview of section 22-19. In such an organization paid solicitors often also perform the functions of information dissemination, discussion, and advocacy of public issues. In addition, where the cause is an unpopular one, the salaries paid to solicitors may have to be relatively high to compensate for the increased unpleasantness resulting from public reaction and to ensure that the needed solicitation effort does indeed occur. Certainly other paid members of the organization work to ob-

6. The Village alleges that CBE, at least, can apply for a permit under the for-profit provisions. It is not clear that CBE would come within the definition of section 22-6, and we note that organizations *purporting* to be charitable come under section 22-19. More importantly, however, as we have already stated, we are concerned here not with the particular characteristics of CBE but instead with the impact of section 22-20(g) on organizations of the type CBE purports to be.

tain and compile relevant information and promote the organization's position on its target issues. The district court recognized the functional distinction between traditional charitable organizations and those more oriented toward advocacy.

Mr. Justice Brennan, concurring in *Hynes*, noted the importance of canvassing in the areas of political campaigns and public matters, citing particularly the importance of discussion of sensitive and controversial issues. 425 U. S. at 625, 96 S. Ct. at 1763. Although Mr. Justice Brennan recognized the need for more regulation where solicitation of funds is also involved, he was speaking in the context of an ordinance requiring identification; we conclude that the greater regulation he recognized was neither absolute prohibition nor an unnecessary additional burden. But in essence these are the consequences organizations which combine solicitation with their other activities must face.[7]

We do not decide the reasonableness of the 75 percent requirement as applied to solicitation by the more traditional charitable organizations. However, for the reasons stated below, the requirement is on its face unreasonable when applied to an organization which by its nature allegedly devotes a large portion of its efforts to information gathering and promotion of its objectives, and where its paid solicitors necessarily combine solicitation with other primary activities of the organization.

The Village has a legitimate interest in protecting its citizens from fraud by solicitors who will use the funds collected for purposes other than those expressly or impliedly represented. It has a similar protection interest in identifying organizations

7. This court has also recognized the evils of absolute prohibition of canvassing for funds by "a non-profit group that expresses essentially political ideas." In a *per curiam* opinion reversing the denial of a preliminary injunction sought by CBE in *Citizens for a Better Environment* v. *City of Park Ridge*, No. 75-1587, ... F. 2d ..... (7th Cir. 1975), the court condemned, in spite of the legitimate municipal interest in guarding the privacy of citizens and protecting them from fraud, a blanket prohibition on charitable solicitations except upon the request or invitation of residential owners or occupants. The court's characterization of CBE in that decision does not, of course, bind the Village here.

where the salaries paid are so large in relation to the services provided that the organization is actually a for-profit venture. The 75 percent requirement *might* be valid where solicitors represent themselves as mere conduits for contributions. But the requirement as it exists in the Village code also applies where it is made clear that the contributions will be used for reasonable salaries of those who will gather and disseminate information relevant to the organization's purpose. Thus the standard is not a sufficiently narrow solution to the problems of potential fraud or to the need to identify those organizations entitled only to the protections afforded commercial speech. The freedom of expression of organizations which do not present these problems is also infringed, either by absolute prohibition or the additional burden of the for-profit permit requirements.

In *Schneider* the Supreme Court stated that although abridgment of First Amendment freedoms may be an efficient and convenient means to prevent fraud and trespass, these considerations cannot justify such abridgment. See also Justice Brennan's concurrence in *Hynes*, quoting *Thomas* v. *Collins*, 323 U. S. 516, 530, 65 S. Ct. 315, 323, 89 L. Ed. 440 (1945):

> "[I]n the area of First Amendment protections, '[t]he rational connection between the remedy provided and the evil to be curbed, which in other contexts might support legislation against attack on due process grounds, will not suffice. . . . Accordingly, whatever occasion would restrain orderly discussion and persuasion, at appropriate time and place, must have clear support in public danger, actual or impending.' "

425 U. S. at 628, 96 S. Ct. at 1764. Section 22-20(g) does not meet this standard.

Our conclusion is not inconsistent with the Fifth Circuit's decision in *Nat'l Foundation* v. *City of Ft. Worth*, 415 F. 2d 41 (5th Cir. 1969), *cert. denied*, 396 U. S. 1040 (1970). That decision upheld an ordinance which limited the cost of solicitation of charitable contributions to 20 percent of total receipts. However, the ordinance also allowed an organization which did

not meet the requirement to show that its percentage was not unreasonable. The court recognized that within the broad class of charitable organizations a rigid percentage requirement would be difficult to justify, stating:

> "A fixed percentage limitation on the costs of solicitation might be undesirable and inapplicable if applied to all types of charitable organizations. What may be proper in one situation may not be so in other situations. The ordinance before us does not imply a fixed standard but permits a determination of reasonableness of the ratio between the cost of solicitation and the amount collected."

Section 22-20(g) provides no similar flexibility.

Accordingly, the decision of the district court is affirmed.

A true Copy:

Teste:

.....

Clerk of the United States Court of Appeals for the Seventh Circuit

APPENDIX B—OPINION OF UNITED STATES DISTRICT COURT.

IN THE UNITED STATES DISTRICT COURT
* * (Caption—76 C 470) * *

FINAL JUDGMENT.

The Plaintiffs in this action are the Citizens for a Better Environment (CBE), an Illinois not-for-profit corporation, and a certain named employee of the organization. CBE's major source of financial support consists of small contributions from individual citizens. CBE wishes to conduct a door-to-door fund-raising canvass in the defendant village, Schaumburg, Illinois. In Count I, the Plaintiffs contend that the Village of Schaumburg's refusal to allow a CBE canvass deprives them of their rights guaranteed by the first and fourteenth amendments to the United States Constitution. Counts II and III of the Complaint charge that Village of Schaumburg's solicitation ordinance violates the first and fourteenth amendments. Count II challenges the Ordinance as enacted by the Village of Schaumburg, and Count III challenges its subsequent codification.

CBE seeks: (1) judgment declaring the ordinance void and an injunction prohibiting its enforcement; and (2) judgment declaring the Village Board's action void and an injunction prohibiting further interference with the Plaintiffs' right to canvass Schaumburg. CBE now moves for summary judgment. This motion is now ready for decision on the pleadings, exhibits, and memoranda submitted by the parties.

The Schaumburg ordinance regulates charitable solicitation. All prospective solicitors must first procure a charitable solicitation permit from the Village. The applicant must submit information, including the name of the organization and the name

under which it intends to solicit contributions, the name and address of the person in charge of solicitation in the Village, the names and addresses of all persons who will solicit contributions in the Village, the dates and times of day such solicitations are to be made, and the geographic area within the Village wherein such solicitation shall be conducted at a particular time and day, a written statement of recent date by the Attorney General of Illinois that the organization has complied with the provisions of "An Act to Regulate Solicitation and Collection of Funds for Charitable Purposes," satisfactory proof that the organization is a tax-exempt organization under the Internal Revenue Code of the United States, § 501(c)(3), and satisfactory proof that at least seventy-five percent of the proceeds of such solicitations will be used directly for the charitable purpose of the organization.

Chapter 22, § 20(g), of the Schaumburg Village Code states the following:

> (g) Satisfactory proof that at least seventy-five percent of the proceeds of such solicitations will be used directly for the charitable purpose of the organization. For such purposes, the following items shall not be deemed to be used for the charitable purposes of the organization, to wit:
>
> (1) Salaries or commissions paid to solicitors;
>
> (2) Administrative expenses of the organization, including, but not limited to, salaries, attorneys' fees, rents, telephone, advertising expenses, contributions to other organizations and persons, except as a charitable contribution and related expenses incurred as administrative or overhead items.
>
> For the purpose of satisfying the requirements of subparagraph (g), the organization shall submit a certified audit of the last full year of operations, indicating the distribution of funds collected by the organization, or such other comparable evidence as may demonstrate the fact that at least seventy-five per cent of the funds collected are utilized directly and solely for the charitable purpose of the organization. (Ord. No. 1052, § 3.)

CBE's main concern is with this particular requirement.

Through the years, the United States Supreme Court has enunciated definitive guidelines for application when the government's right to regulate clashes with first-amendment freedoms. Plainly, the government may regulate solicitation in order to protect the community from fraud. A city may, for example, require the solicitor to appear and establish his identity and authority to act in behalf of the cause he represents. *Cantwell* v. *Connecticut*, 310 U. S. 296, 306 (1940). Any action impinging upon the freedom of expression and discussion, however, must be minimal, and intimately related to an articulated, substantial governmental interest. As noted in *NAACP* v. *Button*, 371 U. S. 415, 438 (1963), "[p]recision of regulation must be the touchstone in an area so closely touching our most precious freedoms." In a long line of cases the Court has consistently invalidated statutes and ordinances that permit a public official to exercise broad discretion in granting or denying the right to engage in constitutionally protected activities; e.g., *NAACP* v. *Button, supra; Staub* v. *City of Baxley*, 355 U. S. 313 (1958); *Martin* v. *City of Struthers*, 319 U. S. 141 (1943); *Cantwell* v. *Connecticut*, 310 U. S. 296 (1940); *Schneider* v. *State*, 308 U. S. 147 (1939).

In this Court's decision of February 25, 1977, in this case entered regarding the Village of Palatine, this Court stated:

> . . . Also constitutionally impermissible, is the provision of the ordinance requiring the applicant to supply "such additional information as the Chief of Police" of the Village of Palatine requests.
>
> This provision authorizes the Chief of Police in his discretion to solicit information about an organization's views and practices, and to deny a permit on the basis of his evaluation of those views and practices.
>
> In fact, this appears to be what happened. Exhibit 4 of the Hoellwarth affidavit is a letter from the Village Board denying plaintiffs the right to solicit because in the Board's view, the majority of plaintiffs contribution do not make their way to plaintiffs' chartered function. This is a form of censorship prohibited by the Supreme Court.

The Schaumburg requirement that 75% of the proceeds of a solicitation will be used directly for the charitable purpose of the organization before a permit will be issued is also constitutionally impermissible.

It does not make any difference that in the case a similar requirement was codified by the Village Board of Schaumburg instead of imposed by the Chief of Police.

The Village of Schaumburg's soliciting ordinance mandates the issuance of a permit to any person or group that can meet its requirements. CBE was apparently denied the right to solicit in the Village of Schaumburg only because it did not comply with this requirement in § 20(g) since CBE is able and willing to comply with the other requirements and does not challenge them at this time.

The Plaintiffs' Motion for Summary Judgment on Counts II and III is granted insofar as Section 20(g) of Chapter 22 of the Village of Schaumburg Code and § 3(g) of Village of Schaumburg ordinance entitled "An Ordinance Regulating Soliciting by Charitable Organizations" and numbered 1052 are declared unconstitutional and void on their face, and their enforcement against CBE is hereby enjoined.

The Plaintiff's Motion for Summary Judgment on Count I is granted. The action of the Village of Schaumburg denying CBE permission to canvass and solicit funds in the Village is declared in violation of the constitutional rights of CBE. The Village of Schaumburg is enjoined from further prohibition of the CBE. canvass and solicitation of funds and is ordered to issue a permit to canvass and solicit funds to CBE forthwith.

Enter:

/s/ Prentice H. Marshall

Judge

Dated: February 17, 1978.

APPENDIX C—AMENDMENTS TO UNITED STATES CONSTITUTION.

AMENDMENT XIV.

§ 1. Citizenship rights not to be abridged by states

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

AMENDMENT [I.]

Freedom of religion, speech and press; peaceful assemblage; petition of grievances

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

SCHAUMBURG VILLAGE CODE, CHAPTER 22, ARTICLE III.

Article III. Charitable Organizations.

For state law as to solicitation of funds for charitable purposes, see Ill. Rev. Stat., ch. 23, § 5101 et seq.

Sec. 22-19. Definitions.

For the purpose of this article, the following words and phrases shall have the following meanings unless a different meaning is required by the context:

Charitable organization. Any benevolent, philanthropic, patriotic, not-for-profit, or eleemosynary group, association or

corporation, or such organization purporting to be such, which solicits and collects funds for charitable purposes.

Charitable purpose. Any charitable, benevolent, philanthropic, patriotic, or eleemosynary purpose.

Contribution. The promise or grant of any money or property of any kind or value, including payments for literature in excess of the fair market value of said literature. (Ord. No. 1052, § 2.)

Sec. 22-20. Permits—Required; contents of application.

Every charitable organization, which solicits or intends to solicit contributions from persons in the village by door-to-door solicitation or the use of public streets and public ways, shall prior to such solicitation apply for a permit. Said application shall be made to the village clerk and shall include the following information:

(a) The name of the organization and the name under which it intends to solicit contributions.

(b) The name and address of the person in charge of solicitation in the village.

(c) The names and addresses of all the persons who will solicit contributions in the village.

(d) The dates and times of day such solicitations are to be made and the geographic area within the village wherein such solicitation shall be conducted at a particular time and day.

(e) A written statement of recent date by the Attorney General of Illinois that the organization has complied with the provisions of "An Act to Regulate Solicitation and Collection of Funds for Charitable Purposes," Illinois Revised Statutes, chapter 23, section 5101, and such statute as it may hereafter be amended.

(f) Satisfactory proof that the organization is a tax exempt organization under the Internal Revenue Code of the United States, section 501(c)(3).

(g) Satisfactory proof that at least seventy-five per cent of the proceeds of such solicitations will be used directly for the charitable purpose of the organization. For such purposes, the following items shall not be deemed to be used for the charitable purposes of the organization, to wit:

(1) Salaries or commissions paid to solicitors;

(2) Administrative expenses of the organization, including, but not limited to, salaries, attorneys' fees, rents, telephone advertising expenses, contributions to other organizations and persons, except as a charitable contribution and related expenses incurred as administrative or overhead items.

For the purpose of satisfying the requirements of subparagraph (g), the organization shall submit a certified audit of the last full year of operations, indicating the distribution of funds collected by the organization, or such other comparable evidence as may demonstrate the fact that at least seventy-five per cent of the funds collected are utilized directly and solely for the charitable purpose of the organization. (Ord. No. 1052, § 3.)

Sec. 22-21. Same—Submission and verification of applications; issuance.

All applications shall be submitted to the village clerk and shall be verified under oath by a responsible officer of the soliciting organization. All completed applications shall be submitted by the village clerk to the village board. If the village board shall find and determine that all requirements of this article have been met, a permit shall be issued specifying the dates and times at which solicitation may take place. (Ord. No. 1052, § 7.)

Sec. 22-22. Same—Fee.

Each application for a charitable solicitation permit shall be accompanied by a fee in the amount of ten dollars. (Ord. No. 1052, § 6.)

Sec. 22-23. Indicted or convicted felons as solicitors.

It shall be unlawful for any charitable organization to utilize as a solicitor any person who has been convicted of a felony or is presently under indictment for a felony. (Ord. No. 1052, § 5.)

Sec. 22-24. Hours; entering premises posted for "no soliciting."

No permit issued under the provisions of this article shall permit solicitation before the hour of 9:00 A.M. and after the hour of 6:00 P.M., or on Sunday. Nothing herein provided shall permit a solicitor to go upon any premises which has posted a sign indicating "no solicitors or peddlers invited." (Ord. No. 1052, § 4.)